IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PEITION NO.3054 OF 2006

Kalyansingh Umedsingh. ...Petitioner.
Versus
M/s. Vecare Dyers & Cleaners P.Ltd. & Ors. ...Respondents.
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Ms.H. Tawadia for the Petitioner.
Mr. R.V. Paranjape for the Respondents.
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CORAM : DR. D.Y. CHANDRACHUD, J.

December 11, 2006.

P.C.:

The Petitioner was employed as a dry cleaner with the First Respondent. The undertaking of the First Respondent came to be transferred to the Second Respondent upon which the Petitioner became an employee of the Second Respondent. The Petitioner came to be suspended from service on 16th June 1993 and a chargesheet was issued on 21st June 1993. After a disciplinary enquiry, the Petitioner was dismissed from service in December 1993. A demand for reinstatement was raised which was thereafter referred to adjudication.

During the pendency of the reference, a settlement was arrived at between the management and the Bombay Labour

Union. The settlement *inter alia* provided a package deal to all the workmen whose names are contained in Annexure-A to the settlement. Clause (2) of the settlement provided that on 10th September 1993, there was a severance of all the workmen who would be deemed to have resigned from service. The amount due and payable to each of the workmen was quantified in the annexure to the settlement. The name of the Petitioner appears at Serial No.160. The Industrial Court disposed of the reference by an order dated 21st March 2006 in terms of the settlement dated 5th November 2004 which was arrived at between the management and the Bombay Labour Union.

On behalf of the Petitioner, it has been submitted that an agreement in respect of dismissal, discharge, removal or termination of service of an employee could not have been arrived at in the form of a settlement with the Union. There is no merit in the submission. Under Sub-section (1) of Section 18 of the Industrial Disputes Act, 1947, a settlement which is arrived at by agreement between the employer and workman otherwise than in the course of a conciliation proceeding is to be binding on the parties to the agreement. The proviso to sub-section (1) which is

inserted by a Maharashtra Amendment (Act No.1 of 1972) provides as follows :

> "Provided that, where there is a recognized union for any undertaking under any law for he time being in force then such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee) shall be arrived at between the employer and the recognized union only; and such agreement shall be binding on all persons referred to in clause (c) and clause (d) of sub-section (3) of this section."

The effect of the proviso is that where there is a recognised Union for any undertaking under any law for the time being in force, an agreement shall be entered into only between the employer and recognised Union. The agreement is thereafter binding on the employer and his successors or assigns and workmen who are employed in the establishment to which the dispute relates on the date of the dispute as well as on persons who subsequently become employees. In so far as an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service or suspension of the employee is concerned, the prohibition contained in the proviso to sub-section (1) to the effect that the agreement shall be entered only with a recognised Union is lifted. In other words, the law does not prohibit the recognised Union from

entering into a settlement with respect to dismissal, discharge, removal, retrenchment, termination of service or suspension of the employee. The bracketed portion of the proviso to Sub-section (1) of Section 18 is in turn an exception to the principle which is laid down in the proviso itself. As a result, where there is a recognised Union, an employer can enter into an agreement only with a recognised Union. This restriction, however, does not apply in the case of dismissal, discharge, removal, retrenchment, termination and suspension. In these circumstances, the contention that has been urged on behalf of the Petitioner cannot be accepted. The validity of the settlement with the recognised Union in the present case was challenged before a Learned Single Judge of this Court. By an order dated 4th July 2005, Mr.Justice D.G. Karnik, dismissed Writ Petition 1284 of 2005 in **Akhil Bharatiya Kamgar Sena vs. Modern Home Credit and Capital Ltd**. The Learned Single Judge noted that the recognised Union has settled all the pending disputes and it appears that the settlement was impugned by a miniscule minority. The matter was carried in appeal. The appeal was dismissed by a Division Bench on 27th September 2005. An interim application was filed before the Supreme Court, being IA 1 of 2006, on behalf of a group of employees who sought permission

to file a Special Leave Petition against the judgment of this Court. The Supreme Court by its order dated 7th August 2006 declined to grant permission as prayed. The Supreme Court noted that one of the reasons for dismissal of the Writ Petition and the writ appeal was that the Union against whom serious allegations were made was not even impleaded as a party Respondent to the petition. The Supreme Court permitted the application to be withdrawn observing that if a petition is filed for challenging the settlement, that would be dealt with by the High Court in accordance with law.

In the present case, the disposal of the reference in terms of the settlement with the recognised Union has been called into question. The validity of the settlement has been adjudicated upon both by a Learned Single Judge of this Court and by the Division Bench. The Industrial Court was justified in disposing of the reference in terms of the settlement which is found to have been accepted by the large body of workmen. In the present proceedings, the validity of the settlement has not been called into question. It is needless to add that the Petitioner would be at liberty to pursue such remedies as are available in law, should he be advised to challenge the validity of the settlement. The Petition

is dismissed.

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